



{In Archive} Request for Confirmation on Effect of Merger

Stephen M. Richmond

to:

Mimi Newton

04/16/2010 03:42 PM

Cc:

"Mccue, Monte W \ (WT\)", "Davis, Peter J \ (WT\)"

Hide Details

From: "Stephen M. Richmond" <SRichmond@bdlaw.com>

To: Mimi Newton/R9/USEPA/US@EPA,

Cc: "Mccue, Monte W \ (WT\)" <Monte.Mccue@siemens.com>, "Davis, Peter J \ (WT\)" <Peterj.Davis@siemens.com>

History: This message has been replied to and forwarded.

Archive: This message is being viewed in an archive.

1 Attachment



2005-06-24 Re_ Westates Carbon (_Newton.Mimi@epamail.epa.gov_).MSG

Mimi - thank you for speaking with me yesterday about the effect of an intra-company merger on an interim status facility. I am writing to seek reconfirmation from EPA that a corporate merger of a wholly owned subsidiary into and with a parent company does not constitute a change in ownership or operational control, as that term is used in the interim status rule at 40 CFR 270.72(a)(4). We discussed and corresponded on this issue several years ago involving a single level merger, and at that time Region 9 agreed that such a merger was not a change in ownership or operational control. I am attaching a copy of the e-mail documenting that exchange for your convenience. The transaction that we are inquiring about this time is the same in concept, with the only difference being that it involves two levels within a company rather than one. The concept and conclusions we believe are identical. I set forth the facts that give rise to our inquiry below, and ask that you confirm by return e-mail if Region 9 agrees with our conclusion.

Siemens Water Technologies Corp (SWT) operates a hazardous waste management facility in interim status under 40 CFR Part 265 and 270. SWT is part of the Siemens family of companies and Siemens is in the process of simplifying its corporate structure by merging many of its operating companies in the United States into a single company, Siemens Industry, Inc., which is now an indirect parent company of SWT.

Currently, SWT is a wholly owned (100%) subsidiary of Siemens Water Technologies Holding Corp (SWTH), which itself is a wholly owned (100%) subsidiary of Siemens Industry, Inc. (SII). In the Fall of this year, Siemens intends to merge SWT with and into SWTH, and then merge SWTH with and into SII. Several similar mergers of subsidiaries with and into SII will occur, with the result that SII will become the principal operating company for Siemens in the United States. SII currently is the indirect 100% owner of SWT, and after the transaction is completed, SWT will simply have merged with and into a parent company. SII itself is an intermediate company, which is ultimately owned by the highest level Siemens entity, Siemens AG.

As the contemplated merger does not involve any new ownership structures, and as it retains all decision making within the existing chain of Siemens entities - that is, all of the entities are 100% within the Siemens family of companies, and the merged companies continue to exist under corporate law in their new merged forms - we do not believe there is any change in ownership or operational control. Under 40 CFR 270.72(a)(4), a change in ownership or operational control is authorized at an interim status facility if a revised Part A application is submitted at least 90 days prior to the change. In this case, we believe that the proposed merger does not constitute a change in ownership or operational control, and that a revised Part A application is therefore not required prior to the mergers. This is functionally no different than our mutual conclusion several years ago, which is documented in the attached correspondence.

Kindly let me know by return e-mail if Region 9 agrees with our conclusion in this analysis that a revised Part A is not required under 40 CFR 270.72(a)(4). SII would be happy to provide a letter to EPA prior to and immediately after the merger so that EPA remains fully apprised of the merger schedule.

Should you have any questions I hope you will not hesitate to contact me.

Best regards.

Stephen M. Richmond

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Please consider the environment before printing this e-mail.

Newton, Mimi

From: <Newton.Mimi@epamail.epa.gov> <Newton.Mimi@epamail.epa.gov>
Sent: Friday, June 24, 2005 3:03 PM
To: Stephen M. Richmond
Cc: Blevins.Mary@epamail.epa.gov
Subject: Re: Westates Carbon

Steve

Got it. I don't believe this new information changes anything about the conclusion in my email from yesterday.
Mimi

Stephen Richmond <SRichmond@bdlaw.com>
To: Mimi Newton/R9/USEPA/US@EPA
06/24/2005 01:16 cc PM
Subject: Re: Westates Carbon

Mimi - thank you for your e-mail and your confirmation of our discussion. In response to your questions:

1. You are correct that we did speak by phone a few weeks ago about a merger of both USFRS and WCAI into USFilter/Ionpure. The USFRS merger had been the subject of our prior discussion, and my letter to you of October 20, 2004, and the WCAI merger was a newly contemplated event. I learned subsequent to our phone call that the merger of USFRS into USFilter/Ionpure had already occurred as described in the October 20 letter. That is why my question by e-mail earlier this week was focused solely on WCAI.
2. I don't see any problem providing two letters to EPA, one before the transaction and one afterwards.

Thank you again for your assistance with this. We really appreciate your quick response to our inquiry.

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>>> <Newton.Mimi@epamail.epa.gov> 6/23/2005 2:59 PM >>>

Steve

Your e-mail below accurately reflects our discussion yesterday as well as my understanding of the Region's position regarding whether a revised Part A permit application needs to be submitted in advance of the anticipated merger. You

are correct that I indicated that no revised Part A permit application would be required under 40 CFR 270.72(a)(4) by the merger of WCAI into US Ionpure. I am a little confused by your email, however, insofar as I had understood that both US Filter Recovery Services and WCAI would be merged with US Ionpure, which is a subsidiary of US Filter. Please clarify whether that understanding is correct.

Also, your email indicates that a letter would be transmitted after the transaction had been completed. I think it might be better if we had a letter advising us of the anticipated transaction before it is effective, and then maybe a follow up letter to let us know that the transaction in fact occurred. I want to ensure that the information about the transaction is in our files at the time of the merger, rather than allow some time period to elapse between the time the transaction occurs and the time we are notified. I hope that will not be a problem. I look forward to hearing back from you about my understanding of the anticipated merger.

Mimi Newton

Stephen Richmond <SRichmond@bdlaw.com>

To Mimi Newton/R9/USEPA/US@EPA

06/22/2005 03:08

cc

PM

Subject Westates Carbon

Mimi - thank you very much for your thoughts on our "change in Ownership or operational control" question this afternoon. I am writing to indicate our understanding of the conclusion that we discussed today And to ask you to confirm by return e-mail that Region 9 agrees with this conclusion.

Westates Carbon-Arizona, Inc. (WCAI) owns a hazardous waste management facility in interim status under 40 CFR Parts 265 and 270. WCAI is one of many wholly owned indirect subsidiaries of Siemens Corporation. As part of an effort underway at Siemens to reduce the number of subsidiary companies, Siemens intends to merge WCAI with and into USFilter/Ionpure, Inc. (Ionpure). Ionpure is currently the owner of all shares of WCAI And is itself a wholly owned indirect subsidiary of Siemens.

Under 40 CFR 270.72(a)(4), a change in ownership or operational control may occur at an interim status facility if a revised Part A Application is submitted 90 days prior to the change. We discussed today that the proposed merger of a Siemens subsidiary company into another Siemens subsidiary company did not constitute either a change in ownership or of operational control under 40 CFR 270.72(a)(4) and therefore concluded that a revised Part A application submittal would not be necessary.

Following completion of the transaction, the company intends to provide a letter to EPA indicating that the change has occurred, and providing any necessary name-change information for the merged company.

Please let me know if I have accurately summarized the conclusions we drew during our call this afternoon. Thanks again for your assistance with this.

Stephen M. Richmond

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